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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/598,733	07/25/2007	D'art Daniel David Braeder	5170-001	9559
22429	7590	03/16/2011	EXAMINER	
LOWE HAUPTMAN HAM & BERNER, LLP			PRANGE, SHARON M	
1700 DIAGONAL ROAD			ART UNIT	PAPER NUMBER
SUITE 300			3728	
ALEXANDRIA, VA 22314				

  

MAIL DATE	DELIVERY MODE
03/16/2011	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/598,733	BRAEDER ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	SHARON M. PRANGE	3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 20 December 2010.

2a) This action is **FINAL**.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 22-27 and 29-41 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 22-27 and 29-41 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.  
 5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_

## DETAILED ACTION

This is in response to Applicant's amendment in which claim 22 has been amended, and claims 22-27 and 29-41 remain pending.

### ***Claim Rejections - 35 USC § 103***

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 22-27, 29-31, 36, 37, 40, and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP-3059476, herein JP '476, in view of Rosen et al. (US 7,241,066), herein Rosen, and Suchan et al. (WO2004/041107, as translated by Suchan US 7,625,114), herein Suchan.

JP '476 discloses a dispensing device having a respective receptacle (3) for each of two substances (A, B), and a line of fold (2) between the receptacles. The device is foldable about the line of fold so that the receptacles are superimposed (Fig. 1, 3). A rupturable outlet (5) is defined for each receptacle. The outlets converge towards the line of fold (Fig. 2). When the device is folded the outlets are superposed for dispensing and mixing the two substances, and may be manipulated by a user in a one-handed operation (Fig. 5). The receptacles and outlets are disposed so that they are transposed mirror images of each other about the line of fold. The outlets include a weakened region in the form of a tear line (6). The outlets have a flat edge created by the cover material (7) when the device is ruptured along the tear line. The device has two flexible laminae (3, 7) which are sealed together to define the two receptacle (Fig. 2). The

outlets are capable of being aligned in a one-handed operation and the substances simultaneously dispensed, mixed, and applied (Fig. 5).

JP '476 does not disclose indicia on the device. Rosen teaches providing indicia on a single-use dispensing device in order to instruct a user how to open and use the device (column 6, lines 32-50; column 10, lines 46-55; column 24, lines 30-35). It would have been obvious to one of ordinary skill in the art at the time of the invention to have provided indicia, as taught by Rosen, on the device of JP '476 in order to help instruct a user on how to open and use the device.

The combination of JP '476 and Rosen discloses the claimed invention except for the specific arrangement and/or content of indicia (printed matter) set forth in the claim(s). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have included indicia indicating the placement of a thumb and forefinger of a user since it would only depend on the intended use of the assembly and the desired information to be displayed. Further, it has been held that when the claimed printed matter is not functionally related to the substrate it will not distinguish the invention from the prior art in terms of patentability. *In re Gulack*, 217 USPQ 401, (CAFC 1983). The fact that the content of the printed matter placed on the substrate may render the device more convenient by providing an individual with a specific type of indicia does not alter the functional relationship. Mere support by the substrate for the printed matter is not the kind of functional relationship necessary for patentability. Thus, there is no novel and unobvious functional relationship between the printed matter e.g. indicia and the substrate e.g. dispensing device which is required for patentability.

The combination of JP '476 and Rosen does not disclose that the receptacles have a circular base with a flat upper surface. JP '476 does teach that the receptacles may be one a variety of different shapes (as seen in Fig. 1, 6), and that the receptacle has a flat upper surface (Fig. 1, 3). Suchan teaches that a dispensing receptacle (depression 3, 4) may be circular in shape (Fig. 9). It would have been obvious to one of ordinary skill in the art at the time of the invention to have made the receptacles JP '476 a circular shape, as taught by Suchan, as this would be a matter of obvious design choice. A change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. *In re Dailey et al.*, 149 USPQ 47.

Regarding claims 30 and 31, the combination of JP '476, Rosen, and Suchan discloses the claimed invention except for the material of the laminae. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have used, for example, foil or polyethylene in order to use inexpensive materials which are watertight. It has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Regarding claims 41, the combination of JP '476, Rosen, and Suchan discloses the general conditions of the claimed invention except for the express disclosure of radius of the base and top of the receptacles. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have made the radius of the base approximately 7.5 mm and the radius of the top approximately 5 mm, since the

claimed values are merely an optimum or workable range. It has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

3. Claims 34 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP '476, Rosen, and Suchan, as applied to claims 22-27, 29-31, 36, 37, and 40, further in view of Fukushima (US Patent No. 4,790,429).

JP '476 does not disclose the type of substances stored in the receptacles.

Fukushima teaches that foodstuffs or medical substances may be stored in a single-use dispensing device with two separate receptacles (column 1, lines 48-51). It would have been obvious to one of ordinary skill in the art at the time of the invention to have provided foodstuffs or medical substances in the dispensing device of JP '476 as it is well known to provide these substances in a container in which they are stored separately but then dispensed and mixed simultaneously.

4. Claims 32, 33, 38, and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP '476, Rosen, and Suchan, as applied to claims 22-27, 29-31, 36, 37, and 40, further in view of Bollmeier (US Patent No. 3,074,544).

JP '476 does not disclose the type of substances stored in the receptacles.

Bollmeier teaches that epoxy and a hardener (curing agent) may be stored in a single-use dispensing device with two separate receptacles (column 1, lines 61-70). It would have been obvious to one of ordinary skill in the art at the time of the invention to

have provided epoxy and a hardener in the dispensing device of JP '476 as it is well known to provide these substances in a container in which they are stored separately but then mixed together and dispensed.

***Response to Arguments***

5. Applicant's arguments filed 12/20/10 have been fully considered but they are not persuasive. Applicant argues that the cited references do not disclose a flat edge on the rupturable outlet. However, as seen in Fig. 2 of JP '476, the cover material lays flat across the rupturable outlet, and therefore creates a flat edge when the outlet is ruptured along the tear line. This flat edge is capable of assisting in mixing of the two substances.

***Conclusion***

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SHARON M. PRANGE whose telephone number is (571)270-5280. The examiner can normally be reached on M-F 7:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/S. M. P./            3/12/11  
Examiner, Art Unit 3728

/Mickey Yu/  
Supervisory Patent Examiner, Art  
Unit 3728